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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,716	12/12/2003	Rodney Eugene Libby	LIB0001-US1	2353

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EXAMINER

GORDON, STEPHEN T

ART UNIT PAPER NUMBER

3612

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/734,716	Applicant(s) LIBBY, RODNEY EUGENE	
	Examiner Stephen Gordon	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005 and 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-20 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. After further review of the instant application, it has been determined that a rejection over the prior art with regard to some of the pending claims is warranted. The finality of the last office action is withdrawn in favor of the current action. In an effort to expedite prosecution, applicant's amendment filed 5-26-05 has been entered. Any inconvenience caused applicant by the previous indication of allowable subject matter with regard to the now rejected claims is regretted.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolda '724.

Wolda teaches a vehicle tailgate assembly including a tailgate 24 and a vehicle sidewall 28+. A torsion spring 56 includes a first leg 60 attached to the sidewall via the bracket 50 and bushing assembly 48,74 and a second leg 58 attached to the tailgate via bracket 46 (see figure 4). The torsion spring 56 is actuated in a winding direction as the tailgate is opened – see section 4, lines 60-65 etc.

Claim 2, both the legs are removably attached.

Claim 24, at least the hole in element 46 which receives spring second leg 58 defines a tailgate hole as broadly claimed – see figure 4. Moreover, at least

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tailgate support/sidewall elements 74,48+ define a hole for receiving spring first leg 60 as broadly claimed – see figure 3 etc.

Claim 25, the support is deemed to define a sidewall as broadly claimed.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolda '724.

Claims 4-5, Wolda teaches all of the claimed features as discussed above regarding claim 1 and further teaches that the dimensions of the spring 56 may be varied to account for at least the amount of force desired – see section 5, lines 12-17. Wolda, however, fails to specifically teach the dimensions recited in claims 4 and 5. The specific dimensions of the spring in this case would be driven by the specific application for which it is utilized, and the spring size would depend on strength, force, and durability requirements. Specific recitation of dimensions/size in this case then would not define a patentable departure from the teachings of Wolda.

Claims 6-10, Wolda teaches all of the claimed features as discussed above regarding claim 1 but fails to specifically teach the materials recited in claims 6-10. High carbon steel springs of the type defined in the instant claims 6-10 are some of the more common types of springs in the art and are utilized because of

their desirable strength, resiliency, durability, and spring constant (K) characteristics as required by a specific application. Specific recitation of the specific alloy component concentrations or hardness in this case then would not define a patentable departure from the teachings of Wolda.

6. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 11-20 are allowed.

8. Applicant's arguments with respect to the rejected claims filed in the 2-14-05 amendment have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's amendment of 2-14-05 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 7-4-05
Stephen Gordon
Primary Examiner
Art Unit 3612

stg